

REMARKS

Claims 15, 21-22, 25, 26 and 48-52, 55 and 56 are pending in the application. Claim 18, 53 and 54 have been canceled without prejudice. Support for the amendments to claims 50 and 52 is found in the specification at page 1, lines 24-31, page 4, lines 15-18, page 5, lines 15-23, page 7, lines 15-29, page 12, lines 30-32, page 13, lines 1-13, Table 1 on page 13, page 15, lines 4-15. Support for claims 55 and 56 is found in the specification at page 11, first paragraph and page 12, line 30 through page 13, line 13. No new matter has been added. Applicants will cancel non-elected claims upon indication of a notice of allowance.

1. Election/Restriction

The Examiner has indicated that claims 53 and 54 are directed to an invention originally claimed. Claims 53 and 54 have been withdrawn from consideration as not elected. Applicants have canceled non-elected claims without prejudice and reserve the right to file non-elected claims in a divisional application.

2. Priority

The Examiner alleges that priority for the instant application can not be claimed on prior application serial no. 08/064,559 ('559) filed 5/21/93. Applicants respectfully disagree.

Claims 50 and 52 have been amended. Prior application '559 does support the subject matter of the claims, i.e. that the peptides of the invention (CS3) binds to the described DR1 model.

A description of the binding of CS3 to the DR1 model is found in the '559 application on page 11, lines 19-26 through page 12- lines 1-6 which is identical to the description of the binding of CS3 to the DR1 model in the present application on page 12, lines 30-32 and page 13, lines 1-13. The DR1 model is also described identically in both applications. (See page 9, last paragraph of '559 and page 11, first paragraph of the present application.) The descriptions of the prior application and the current application indicate that CS3 binds to the same location on the DR1 model in both applications. This also supports the Applicants assertion that '559 supports claims 50 and 52.

See also Table 1, on page 12 of '559 and Table I on page 13 of the present application which both show data of an inhibition binding assay with identical results. Table 1 shows that CS3 inhibits the binding of HA to the DR1 model.

Regarding claim 52, the Applicants are unsure why the Examiner asserts that '559 does not provide support for peptides comprising seq. Id 3 (not the protein). Application '559 describes "CS3 subunit pilin peptide with DR1:" on the bottom of page 11 wherein it states that the T-cell epitope for CS3 pilus is subunit 63-78 (Ser-Lys-Asn-Gly-Thr-Val-Thr-Trp-Ala-His-Glu-Thr-Asn-Asn-Ser-Ala). In the present invention, the CS3 peptide (Seq. ID No. 3) is also 63-78 (Ser-Lys-Asn-Gly-Thr-Val-Thr-Trp-Ala-His-Glu-Thr-Asn-Asn-Ser-Ala).page 12, bottom of page 13, top of page. Further Table 1 at the bottom of page 13 in the instant application is identical to table 1 in '559. The "not the protein" words from the Examiner is not completely understood. Both applications discuss peptides and describe them in the same fashion. Therefore, it is submitted that '559 provides priority for the present application under 35 USC 120.

3. Claims 50-52 have been rejected under 35 USC 102(a,b) as allegedly anticipated by Nauss et al., Journal of Immunology, Vol. 150/No. 8, part II, no. 221 (April 15, 1993). Applicants respectfully traverse this rejection.

Applicants have changed inventorship of this application to match the inventorship of the Nauss et al. article. The Examiner has, however, denied priority under section 120 of prior application '559 and has maintained this rejection. Applicants submit that priority is warranted for the reasons given above under item 2. In view of the above comments relating to priority, Applicants request that the Examiner remove this rejection.

4. Claims 15, 21-22, 25, 26 and 48-52 have been rejected under the doctrine of obviousness type double patenting over claims 1-25 of U.S. Patent No. 6,309,669. Applicants submit herewith a copy of the Terminal Disclaimer that was filed on October 31, 2003. This rejection is believed overcome.

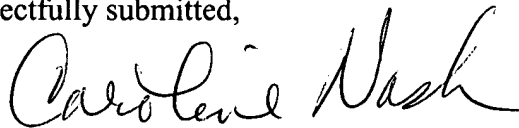
Nauss; et al.
Serial No. 09/013,077

Reconsideration and allowance are respectfully requested.

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Respectfully submitted,

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